

रजिस्टर्ड नं० पी०/एस० एम०-१२.



राजपत्र, हिमाचल प्रदेश

(प्रसाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, वीरवार, १२ अक्टूबर, १९८५/२० अगस्त, १९८७

हिमाचल प्रदेश सरकार

LABOUR DEPARTMENT

NOTIFICATIONS

Shimla-2, the 20th, September, 1985

No. 2-8/83-Lab (Dub).—In exercise of the powers vested in him under Sec. 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to publish the awards of the H.P. Labour Court, Industrial Tribunal as per details given below:—

(1) Case No. 45/79 *Tulsi Ram Versus Himachal Pradesh Agro-Industries Corporation, Shimla.*

- (2) Case No. 431/85—President, Kamla Dials and Devices Workers Union, Parwoon
Versus M/s Kamla Dials and Devices Ltd., Parwanoo.
- (3) Case No. 1/85—Smt. Shanti Devi *Versus* The Management of I.T.I. Una, Himachal Pradesh.

By order,
 Sd/-
 Commissioner-cum-Secretary (Lab.).

**BEFORE THE PRESIDING OFFICER, LABOUR COURT, HIMACHAL PRADESH,
 SHIMLA**

Case No. 45/79

Tulsi Ram *Versus* Petitioner.
 The Managing Director, Himachal Pradesh Agro-Industries Corporation, Shimla
 Respondent.

Shri Pyare Lal Beri, Authorised Representative of the applicant.

Shri K. L. Verma, Authorised Representative of the respondent.

AWARD

Shri Tulsi Ram, petitioner was employed with the respondent management as a Peon in the pay scale of 70-2-80/3-95 plus other usual allowances as admissible to the employees of the Himachal Pradesh Government from time to time. He had joined his duties in pursuance of his order of appointment *w.e.f.* 17-4-1973, at Shimla. He was, however, transferred on 1-11-76 from Shimla to Dharamshala as a night duty chowkidar. As he was a low paid employee, he could not resume duty at Dharamshala and made representations against the transfer.

The services of the petitioner were terminated *vide* order, dated 31-1-1977, the copy of which is Ex. R-7. The petitioner has raised an Industrial Dispute and the same has been referred to this Court *vide* Notification, dated the 17th September, 1979. The following question has been referred:—

“Whether the termination of services of Shri Tulsi Ram, Peon, by the Managing Director, Himachal Pradesh, Agro-Industries Corporation, Limited, Shimla is justified and in order? If not, to what relief and exact amount of compensation, Shri Tulsi Ram, Peon, is entitled to?”

The petitioner has filed his claim petition and it has been replied to by the respondent management. The Management has justified the termination on the ground of misconduct of the petitioner. It has been stated that Shri Tulsi Ram was transferred because of his misconduct and when he did not join at Dharamshala, his new place of posting, his services were terminated *w.e.f.* 24-1-1977/*vide* order dated 31-1-1977.

From the averments of the parties, the following issues arose and have been framed by my learned predecessor *vide* order, dated the 4th December, 1979:—

- (1) Whether the applicant was not a temporary peon? OPP.
- (2) Whether the transfer of the applicant to Dharamshala was irregular, illegal, by way of victimisation? OPP.
- (3) Whether the termination of the applicant from 24-1-1977 is invalid and illegal? OPP.

- (4) Whether the applicant's service could not be terminated without one month's notice or pay in lieu thereof ? OPP.
- (5) Whether the applicant was not performing his duties as a Peon properly, for which he was warned thrice and charge-sheeted once ? OPP.
- (6) Relief.

FINDINGS

Issue No. 1 :

Tulsi Ram, petitioner was appointed *vide* order, dated the 25th April, 1973 (Ex-P-1). According to the terms of the appointment order, he was to be a probationer for a period of six months and his services could be terminated at any time without giving any notice or assigning any reason during the period of probation. The order of termination of services of the petitioner is Ex-R-7, dated 31-1-1977. The petitioner has already completed the period of probation. There was no condition imposed in Ex-R-1 that the period of probation could be extended beyond six months nor there is any material on record to show that the period of probation was extended beyond six months.

In view of this evidence brought on record by the respondent management itself, it can be safely concluded that the petitioner was not a temporary hand. He was regular appointee to the post of a Peon and had actually put in about four years service. I, therefore, hold that the petitioner was a regular appointee to the post of Peon and I decide this issue accordingly in favour of the petitioner and against the respondent management.

Issue No. 2:

The petitioner was transferred to Dharamshala as night duty chowkidar *vide* order, dated 1-11-1976 (Ex-R-3), with immediate effect. He was relieved on 5-11-1976 *vide* order (Ex-R-4). He has, however, not joined his duties at Dharamshala. He was served with a show cause notice (Ex-R-5), dated 5-11-1976, along with articles of charges detailed in R 5/1. Another letter was written to him on 25-11-1976 (Ex-R-6), calling upon him to join his duties immediately on or before 1-12-1976, failing which the Corporation was to take action and was to make alternative arrangements. However, the services of the petitioner had been terminated on 31-1-1977, *vide* Ex-R-7, with effect from 24-1-1977. All these facts show that the order for termination of services of petitioner is illegal. This illegality will be examined in issue No. 3. However, there is no evidence on record that the petitioner had been victimised. I decide this issue accordingly.

Issue No. 3:

The order Ex-R-7 was recorded and passed on 31-1-1977. The services of the petitioner had been terminated with effect from 24-1-1977. The services could not have been terminated with retrospective effect. Moreover, the petitioner had put in four years' service with the respondent management. He was entitled to the retrenchment compensation. The compensation has not been paid to the petitioner and the provisions of section 25F of the Industrial Disputes Act, 1947, have been contravened. This illegality cannot be cured and goes to the root of the order of termination. The order terminating the services of the petitioner on this ground alone is illegal and invalid and is liable to be quashed. I decide this issue accordingly.

Issue No. 4:

The implication of the termination of services of the petitioner have been considered by me while deciding issue No. 3 and this issue need not be considered again. However, I observe that the petitioner was entitled to one month's notice in lieu of one month's wages and on this score as well, the order of termination, Ex-R-7 is illegal and invalid. I decide this issue accordingly in favour of the petitioner and against the respondent/management.

Issue No. 5:

There is no evidence on record to show that the petitioner was not performing his duties as a peon properly. Even if it is assumed that the petitioner was not performing the duties of a peon properly, he could not have been transferred to Dharamshala. This order of transfer appears to be punitive. No punishment could be awarded without hearing the petitioner. The petitioner is admittedly a low paid employee and belongs to Shimla and is residing with his wife and children. The transfer in this case is apparently a severe punishment. The charge-sheet served on him had been dropped and no action had been taken in this regard nor any enquiry has been held.

In view of these considerations, I decide this issue accordingly in favour of the petitioner and against the respondent management.

RELIEF

In the result, I award that the order of termination Ex-R-7, dated 31-1-1977 is invalid and illegal and is liable to be quashed. The petitioner is entitled to all the service benefits including back wages, increments, seniority, provident fund, bonus and continuity of service as if he had been in service, if his services had not been terminated. The reference made by the Government to this court is accordingly answered in the light of the observations made above. The petitioner has not led any evidence to quantify the amount to which he is entitled to. However, the respondent management will calculate all the back wages and other financial benefits in the light of this award and make the payment to him, and in case some amount is not paid to him, the petitioner workman is at liberty to approach this Court again with an appropriate application, if he is so advised.

The petitioner is allowed Rs. 150 as cost of these proceedings. The cost may also be paid to the petitioner along with other emoluments. The copy of this award may be sent to the Government for further action in the matter in accordance with the law.

S. S. KANWAR,
Presiding Officer,
Labour Court, Himachal Pradesh. 11-8-985.

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HIMACHAL PRADESH
CASE No. 431/85

President, Kamla Dials and Devices Workers' Union Parwanoo, District Solan
Himachal Pradesh

.. Petitioners.

Versus

Management, Kamla Dials and Devices, Parwanoo, District Solan, Himachal
Pradesh

.. Respondents.

Shri H. L. Sethi, Authorised Representative of the petitioners.
Shri Chamel Singh Chauhan. The General Secretary of the Petitioner Workmen Union.
Shri V.K. Gupta, the respondent.

AWARD

The General Secretary of the petitioner Union, the Authorised representative of the workmen Union and the authorised representative of the respondent management state that the settlement has been arrived at between the Union and the management. The Copy of the settlement has been filed to-day along with the joint application. The settlement for the purpose of identification is marked Ex-P-1. The application is marked Ex-P-2. In view of this settlement, the parties state that no further proceedings need be recorded. They further state that the parties will be honouring the

the settlement arrived at and this settlement may be made part of the award and that the reference may be answered accordingly.

In view of the settlement arrived at in view of the statement of the parties, I record this settlement and the compromise. There is no illegality or infirmity in this settlement. This settlement is neither void nor voidable. This settlement is acceptable to both the parties and I endorse this settlement as being legal and binding document on the parties. This settlement be made part of the award. This reference stands answered and a copy of the award may be sent to the quarter concerned for publication in the Government Gazette. It is further directed that the copy of the Rajpatra in which this award is to be published may also be sent to this Tribunal for record and further reference. The parties are left to bear their own costs. In the meantime, the copy of this award may be supplied to the parties free of cost.

S. S. KANWAR,
Presiding Officer,
Industrial Tribunal, Himachal Pradesh, 25-8-1985.

BEFORE THE PRESIDING OFFICER LABOUR COURT, HIMACHAL PRADESH, SHIMLA

CASE NO. 1/85

Shrimati Shanti Devi
Management, Industrial Training Institute, Una (Himachal Pradesh)
(Authorised Representative)

... Petitioner.
... Respondent.

Shri Dhani Ram, A.R. of the Petitioner.
Shri Roshan Lal, Authorised Representative of the respondent.

AWARD

This reference has been received *vide* Notification dated the 26th December, 1984. The following question has been referred:—

“Whether the termination of services of Shrimati Shanti Devi is justified and in order. If not, to what relief and exact amount of compensation, she is entitled to?”

Both the parties have filed their claim petitioner. The respondent has raised the plea that this Court has no jurisdiction to entertain and answer this reference. The following preliminary issue was framed by me on 21-4-1985:—

(1) whether this Court has jurisdiction to try this Claim?

I have heard the authorised representatives of the parties. The Industrial Training Institute, where the petitioner Smt. Shanti Devi is employed as a Sweeper is admittedly not Industry and as such she will not be workman. In view of this admitted position, no reference of the dispute could be made to this Court I have no jurisdiction to entertain this reference and to answer the same. I, therefore, decide this issue accordingly and hold that this Court has no jurisdiction to entertain and decide this reference and to make the award. Let the copy of the award be sent to the Government for publication in the Gazette. The copy of this award may be given to the parties free of costs.

S. S. KANWAR,
Presiding Officer,
Labour Court Himachal Pradesh, 25-8-85.

Shimla-2, the 21st September, 1985

No. 2-8/83-Lab(Dup.)—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to publish the awards of the

H.P. Labour Court, Shimla as per details given below:—

- (i) Case No. 371/85—Ramesh Kumar and others *Versus* M/s Taknika Watches, Chamba-ghat, Solan.
- (ii) Case No. 430/85—Sarup Giri *ex-Driver* *Versus* M/s Snow View Transport Pvt. Ltd., Dharamshala.

By order,
Sd/-
Commissioner-cum-Secretary Labour.

**BEFORE THE PRESIDING OFFICER, LABOUR COURT, HIMACHAL PRADESH, SHIMLA,
HIMACHAL PRADESH**

CASE No. 371/85

Ramesh Kumar and other *ex-Workers*

Petitioners.

Versus

M/s Teknika Watches, Chambaghat, District Solan, (H.P.)

Respondents.

None for the parties

AWARD

This case has been called many times since morning. No body is appearing. Both the parties have been duly served. No claim has been filed. It is not possible to answer reference. The proceedings are, therefore, dropped. The copy of this award be sent to the Government for publication.

S. S. KANWAR,
Presiding Officer,
Labour Court, Himachal Pradesh, 1-9-1985.

**BEFORE THE PRESIDING OFFICER, LABOUR COURT, HIMACHAL PRADESH,
SHIMLA, HIMACHAL PRADESH**

CASE No. 430/85

Sarup Giri, *ex-Driver*

Petitioner.

Versus

The Director Incharge, Snow View Transport, Dharamshala

Respondent.

Shri P. L. Beri, Authorised Representative of the petitioner.

None for the respondent

AWARD

Shri Sarup Giri joined M/s Snow View Transport Private Limited, Dharamshala as a Driver in October, 1982. His monthly emoluments were fixed at Rs. 418. In addition to this, he was also entitled to a share in the daily earning from the sale of tickets to the passengers travelling in the bus driven by the petitioner. The average commission so earned came to Rs. 15 to Rs. 20 per day. The services of the petitioner have been terminated by the respondent management with effect from 8-7-1984. He raised an Industrial Dispute and the following question has been referred for determination to this Court *vide* Notification, dated 12-7-1985:—

“Whether the termination of services of Shri Sarup Giri, Driver by the respondent management of the Snow View Transport Pvt. Ltd., Dharamshala was justified and in order. If not, what relief and amount of compensation, Shri Sarup Giri is entitled to?”

Notices to the parties were issued and have been served. No body appeared for the respondent management on 30-6-1985, and *exparte* proceedings have been recorded against them. The petitioner had also not filed any claim petition on 30-6-1985 and he requested and was allowed time to file the claim petition with the specific directions that he will send the copy of the claim petition before filing the claim in this Court. The petitioner has filed the claim petition on 21-7-1985, and had supplied the copy thereof to the respondent management much before. The A/D receipt, Ex-P-1 shows that the copy of the claim petition has been received by the respondent management on 8-7-1985. In spite of this, nobody has appeared for the respondent management.

I have recorded *exparte* evidence. The petitioner himself has appeared as a witness and has substantiated his claim. The respondent management, according to him, has terminated his services without any reasons and without holding any enquiry and without serving a show cause notice and without the payment of wages for the notice period and also without the payment of retrenchment compensation.

From this *exparte* evidence, the petitioner has been able to establish that his services had been terminated without any reasonable cause or excuse and without following the rules and the provisions of law specifically section 25F of the Industrial Disputes Act, 1947, and rule 82 of the Himachal Pradesh Industrial Disputes Rules, 1974. The order terminating the services of the petitioner is invalid and illegal and is liable to be quashed and is hereby quashed.

The petitioner is entitled to all the services benefits to which he is entitled to, had his services not been terminated. The petitioner is entitled to recover the back wages from 8-7-1984 till he is taken back in service. He is entitled to the wages at the rate of Rs. 418 per month plus Rs. 15 (Commission) per day upto 16-8-1984. He is entitled to recover wages at the rate of Rs. 501 per month Rs. 15 (Commission) per day after 16-8-1984 and upto his re-instatement. He is also entitled to all the service benefits to which he is entitled to as a workman. The copy of this award may be sent to the Government for publication in the Rajpatra. The copy of the Rajpatra may be supplied to this Court for record.

S. S. KANWAR,
Presiding Officer,
Labour Court, Himachal Pradesh, 1-9-1985.